

<u>No:</u>	BH2022/02361	<u>Ward:</u>	West Hill & North Laine Ward
<u>App Type:</u>	Removal or Variation of Condition		
<u>Address:</u>	76 - 79 And 80 Buckingham Road Brighton BN1 3RJ		
<u>Proposal:</u>	Variation of condition 1 of BH2020/02102 and condition 1 of BH2022/02752 [Mixed use development providing residential units (C3) and community use (D1)] to allow amendments to drawings comprising addition of 2no new residential units, design alterations to the roof form, removal of the reinforced concrete frame, reconfiguration of internal space including vehicle parking and associated alterations.		
<u>Officer:</u>	Joanne Doyle, tel: 292198	<u>Valid Date:</u>	21.07.2022
<u>Con Area:</u>		<u>Expiry Date:</u>	20.10.2022
<u>Listed Building Grade:</u>		<u>EOT:</u>	29.09.2023
<u>Agent:</u>	Savills Mocatta House Trafalgar Street Brighton BN1 4DU		
<u>Applicant:</u>	C/o Savills Mocatta House Trafalgar Street Brighton BN1 4DU		

1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to be **MINDED TO GRANT** planning permission subject to a s106 agreement on the Heads of Terms set out below and the following Conditions and Informatives as set out hereunder, SAVE THAT should the s106 Planning Obligation not be completed on or before 27 November 2024 the Head of Planning is hereby authorised to refuse planning permission for the reasons set out in section 12 of this report.

S106 Head of Terms

Affordable Housing

The provision of a commuted sum payment of £500,000 towards the provision of affordable housing in the city, with a review mechanism to ensure any uplift in profit is reflected in the amount secured.

Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

Reason: For the avoidance of doubt and in the interests of proper planning.

Plan Type	Reference	Version	Date Received
Proposed Drawing	D.001	-	16 August 2024
Proposed Drawing	D.002	-	16 August 2024
Proposed Drawing	D.003	-	16 August 2024
Proposed Drawing	D.004	-	16 August 2024
Proposed Drawing	D.005	-	16 August 2024
Proposed Drawing	D.006	-	16 August 2024

Proposed Drawing	D.007	-	16 August 2024
Report/Statement	DAYLIGHT AND SUNLIGHT ASSESSMENT	-	21 July 2022
Report/Statement	NOISE IMPACT ASSESSMENT	-	21 July 2022
Report/Statement	PLANNING STATEMENT	-	13 December 2022
Report/Statement	FINANCIAL VIABILITY ASSESSMENT REPORT	-	22 October 2022
Location and block plan	1.001	-	16 August 2024
Proposed Drawing	D.008	-	16 August 2024
Proposed Drawing	D.009	-	16 August 2024
Proposed Drawing	D.010	-	16 August 2024
Proposed Drawing	D.011	-	16 August 2024

2. Not applicable.
3. No cables, wires, aerials, pipework (except rainwater downpipes shown on the approved plans) meter boxes, ventilation grilles or flues shall be fixed to or penetrate any external elevation, other than those shown on the approved drawings, without the prior consent in writing of the Local Planning Authority.
Reason: To ensure a satisfactory appearance to the development and to comply with Policies CP15 of the City Plan Part One and DM21 and DM26 of the City Plan Part Two.
4. The development shall be implemented in accordance with the details of all new windows - approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure a satisfactory appearance to the development and to comply with Policies CP15 of the City Plan Part One and DM21 and DM26 of the City Plan Part Two.
5. The development shall be implemented in accordance with the details of details of roof eaves, balconies and railings- approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure a satisfactory appearance to the development and to comply with Policies CP15 of the City Plan Part One and DM21 and DM26 of the City Plan Part Two.
6. The development shall be implemented in accordance with the details of materials- approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure a satisfactory appearance to the development and to comply with Policies CP15 of the City Plan Part One and DM21 and DM26 of the City Plan Part Two.

7. The community use and communal garden hereby permitted shall not be operated or open to the public outside the following hours; 8am-10pm. No variation to the above hours shall be permitted without the prior written approval of the Local Planning Authority.
Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy DM20 of the City Plan Part Two.
8. No equipment or machinery (excluding the MVHR ventilation units) shall be operated at the site outside the following hours 7am-11pm. No variation to the above hours shall be permitted without the prior written approval of the Local Planning Authority. Noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed a level 5dB below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:1997. In addition, there should be no significant low frequency tones present.
Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy DM20 of the City Plan Part Two.
9. Prior to first occupation of the residential units at 80 Buckingham Road, details of the proposed sound insulation scheme to be implemented between the development and the adjoining premises and/or between the residential accommodation and any residential or non residential uses shall be submitted to and approved by the Local Planning Authority. The Building Regulations Part E assessment is to take account of the electrical substation and the internal noise environment generally. The Party Walls/Floors between the ground floor units and the first floor residential units should be designed to achieve a sound insulation value of 5dB better than Approved Document E performance standard, for airborne and structural sound insulation for floors of purpose built dwelling-houses and flats. Details should include airborne and/or impact sound insulation. The developer shall certify to the local planning authority that the noise mitigation measures agreed have been installed. The approved scheme is to be completed prior to occupation of the development and shall be permanently maintained thereafter.
Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy QD27 of the Brighton and Hove Local Plan and DM20 of the Submission City Plan Part 2.
10. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, a method statement to identify, risk assess and address the unidentified contaminants. Verification of the steps taken to protect human health including photographs, consignment notes and invoices for example for barrier pipework shall be provided. The structure shall not be lived in. The structure shall not have a water infrastructure applied to it until this condition is satisfied.

Reason: As this matter is fundamental to the acceptable delivery of the permission to safeguard the health of future residents or occupiers of the site and to comply with Policy DM41 of the City Plan Part Two.

11. The development shall be implemented in accordance with the asbestos detail- approved by the Local Planning Authority under application BH2019/02322.
Reason: As this matter is fundamental to the acceptable delivery of the permission to safeguard the health of future residents or occupiers of the site and to comply with Policy DM41 of the City Plan Part Two.
12. The development shall be implemented in accordance with the Construction Environmental Management Plan (CEMP) detail- approved by the Local Planning Authority under application BH2019/02322.
Reason: As this matter is fundamental to the protection of amenity, highway safety and managing waste throughout development works and to comply with Policies CP8 of the City Plan Part One, and WMP3d of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan 2013 and Supplementary Planning Document 03 Construction and Demolition Waste and DM20, DM33 and DM40 of the City Plan Part Two.
13. No development above ground floor slab level of any part of the development hereby permitted shall take place until the mitigation measures outlined in the Anderson Acoustic reports, including revision April 2018, must be implemented and tested to verify performance, and shall thereafter be retained as such.
Reason: To safeguard the amenities of the occupiers of the property and adjoining properties and to comply with Policies DM20 and DM40 of the City Plan Part Two.
14. The development shall be implemented in accordance with details of Highways works- approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure that suitable footway provision is provided to and from the development and to comply with Policies CP9 of the City Plan Part One and DM33 of the City Plan Part Two.
15. The development shall be implemented in accordance with details of parking scheme- approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure that suitable parking provision is provided to and from the development and to comply with Policies CP9 of the City Plan Part One and DM33 of the City Plan Part Two.
16. The development shall be implemented in accordance with details of cycle parking facilities- approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure that suitable cycle provision is provided to and from the development and to comply with Policies CP9 of the City Plan Part One and DM33 of the City Plan Part Two.

17. Prior to first occupation of the residential units at 80 Buckingham Road, the use-class F community unit shown on the approved plans shall be made available for use and retained as such thereafter.
Reason: To ensure the satisfactory provision of space for community use on site and to ensure the development complies with Policy DM9 of the City Plan Part Two.
18. Not applicable.
19. None of the new build residential units hereby approved shall be occupied until each residential unit built has achieved a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
Reason: To ensure that the development is sustainable and makes efficient use of water to comply with policy CP8 of the City Plan Part One.
20. At least two of the new build units hereby approved shall be completed in compliance with Building Regulations Optional Requirement M4(3)(2b) (wheelchair user dwellings) prior to first occupation and shall be retained as such thereafter. All new build dwellings within 80 Buckingham Road hereby permitted shall be completed in compliance with Building Regulations Optional Requirement M4(2) (accessible and adaptable dwellings) prior to first occupation and shall be retained as such thereafter. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
Reason: To ensure satisfactory provision of homes for people with disabilities and to meet the changing needs of households and to comply with Policy DM1 of the City Plan Part Two.
21. The development shall be implemented in accordance with the elevational landscaping drawings- approved by the Local Planning Authority under application BH2019/02322.
Reason: To ensure a satisfactory appearance to the development and to comply with Policies CP15 of the Brighton & Hove City Plan Part One and DM21 and DM26 of the City Plan Part Two.
22. The development shall be implemented in accordance with surface water drainage works - approved by the Local Planning Authority under application BH2019/02322.
Reason: As this matter is fundamental to the acceptable delivery of the permission to prevent the increased risk of flooding and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal and to comply with Policy DM42 of the City Plan Part Two.
23. Prior to first occupation of the residential units at 80 Buckingham Road, details of the car parking provision, including disabled spaces, for the occupants of, and visitors to, the development shall have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and made available for use for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development

hereby approved prior to the first occupation of the development and shall thereafter be retained for use at all times.

Reason: To ensure the development provides for the needs of disabled staff and visitors to the site and to comply with SPD14: Parking Standards and Policy DM36 of the City Plan Part Two.

24. The development shall be implemented in accordance with details of refuse and recycling storage - approved by the Local Planning Authority under application BH2019/02322.

Reason: To ensure the provision of satisfactory facilities for the storage of refuse and to comply with Policy CP8 of the Brighton & Hove City Plan Part One and Policy WMP3e of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan Waste and Minerals Plan and DM20 of the City Plan Part Two.

25. Prior to first occupation of the residential units at 80 Buckingham Road, double glazing shall be installed throughout the new and converted buildings providing a minimum laboratory tested sound insulation performance of R_w 31dB +Ctr 27dB to provide a comfortable noise environment within the buildings.

Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy DM20 of the City Plan Part Two.

26. No development above ground floor slab level of any part of the development hereby permitted shall take place until details of the proposed sound insulation scheme to be implemented between the development and the adjoining premises and/or between the residential accommodation and any residential or non residential uses have been submitted to and approved by the Local Planning Authority. The Building Regulations Part E assessment is to take account of the electrical substation and the internal noise environment generally. The Party Walls/Floors between the ground floor units and the first floor residential units should be designed to achieve a sound insulation value of 5dB better than Approved Document E performance standard, for airborne and structural sound insulation for floors of purpose built dwelling-houses and flats. Details should include airborne and/or impact sound insulation. The developer shall certify to the local planning authority that the noise mitigation measures agreed have been installed. The approved scheme is to be completed prior to occupation of the development and shall be permanently maintained thereafter.

Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy DM20 of the City Plan Part Two.

27. Prior to first occupation of the residential units at 80 Buckingham Road, the maximum permissible noise level from the air source heat pumps must be adhered to and the following mitigation measures are to be employed as per Anderson Acoustic report April 2018 (2852_004R_2-0_JB):

- a) In-duct intake and exhaust silencers fitted to air source pumps;
- b) Plant room, light well and car park reflecting walls and ceilings to be covered with absorptive material such as 12mm thick Sonaspray fc acoustic plaster;
- c) Strategic duct termination away from sensitive windows;
- d) Acoustic louvres to air source heat pump intakes.

Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy DM20 of the City Plan Part Two.

28. Prior to first occupation of the residential units at 80 Buckingham Road, the removal of asbestos containing materials shall be carried out.

Reason: As this matter is fundamental to the acceptable delivery of the permission to safeguard the health of future residents or occupiers of the site and to comply with Policy DM41 of the City Plan Part Two.

29. Prior to first occupation of the residential units at 80 Buckingham Road, the applicant shall provide in writing to the local planning authority a detailed scheme of construction for the party wall separating the lower ground floor electrical substation and the adjacent residential unit. The scheme shall be subject to approval and attention shall be paid to ensuring high mass and containment of low frequency tones as well as junction details at floor and ceiling height to avoid weak areas for sound energy to penetrate.

Reason: To protect the amenity of nearby and adjacent occupiers in accordance with Policy DM20 of the City Plan Part Two.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant is requested to install historic street name plates to replace the existing signs to Alfred Road, Albert Road, Upper Gloucester Road, Buckingham Road and Buckingham Street.
3. The commemorative E. Marshall plaque on the ramp adjoining 79 Buckingham Road shall be relocated to 80 Buckingham following completion of the new build construction at No. 80. The future location of the plaque should be agreed with the Council.
4. The applicant is advised that Part L - Conservation of Fuel and Power of the Building Regulations 2022 now requires each residential unit built to have achieved a 31% reduction in carbon emissions against Part L 2013.
5. The water efficiency standard required under condition 19 is the 'optional requirement' detailed in Building Regulations Part G Approved Document (AD) Building Regulations (2015), at Appendix A paragraph A1. The applicant is advised this standard can be achieved through either: (a) using the 'fittings approach' where water fittings are installed as per the table at 2.2, page 7, with a maximum specification of 4/2.6 litre dual flush WC; 8L/min shower, 17L bath, 5L/min basin taps, 6L/min sink taps, 1.25L/place setting dishwasher, 8.17 L/kg washing machine; or (b) using the water efficiency calculation methodology detailed in the AD Part G Appendix A.

6. The applicant is advised that Part O of Building Regulations 2022 has been introduced. This standard is aimed at designing out the need for mechanical air conditioning systems in dwellings that would otherwise be prone to overheating and limiting unwanted solar gains. There are optional methods to demonstrate compliance through the Building Regulations.

2. SITE LOCATION

- 2.1. The site is 0.13 hectares in area and situated on a corner site bounded by roads on three sides: Buckingham Road to the west, Upper Gloucester Road to the south, and Buckingham Street to the east. It is located within the West Hill Conservation Area.
- 2.2. The site comprises two connected buildings (nos. 76-79 and no.80). Nos 76-79 comprising four terraced former Victorian townhouses which were converted to from a single building. No. 80 comprised of a 1970s five storey building of little heritage or architectural merit, being identified as visually harmful in the West Hill Conservation Area Appraisal and replaced the former Brighton Grammar School (later Maternity Hospital).
- 2.3. The works to convert the four houses (No's 76-79) have been completed and the erection of the new build block (No.80) is still at the early stages of construction.

3. RELEVANT HISTORY

- 3.1. **BH2022/02752-** Non-Material Amendment to application BH2018/01137, as amended by BH2020/02102 and BH2021/03435, to change the original description of the development to: Partial demolition of no. 80 Buckingham Road erection of a five storey building over basement including roof accommodation to create dwelling units (C3) and community use unit (D1). Conversion of nos. 76-79 Buckingham Road to provide dwelling units (C3) with associated car parking, cycle parking, landscaping and service provision. Approved 30.09.2022.
- 3.2. **BH2021/03435-** Application for variation to amend the wording of condition 9 of BH2020/02102 to allow the sound insulation scheme to be submitted prior to occupation. Approved 23.12.2021.
- 3.3. **BH2020/02102-** Application for variation of condition 1 of application BH2018/01137 (Partial demolition of no. 80 Buckingham Road erection of a five storey building over basement including roof accommodation to create 20no. dwelling units (C3) and community use unit (D1). Conversion of nos. 76-79 Buckingham Road to provide 14no. dwelling units (C3) with associated car parking, cycle parking, landscaping and service provision) to allow amendments to approved drawings for the transfer of affordable units to the new build area of the development. Approved 23.06.2021.

- 3.4. **BH2019/02322**- Application for approval of details reserved by conditions 4, 5, 6, 9, 11, 12, 14, 15, 16, 21, 22 and 24 of application BH2018/01137. Split Decision on 09.04.2020. The reason for the split decision:
- Conditions 4, 5, 6, 11, 12, 14, 15, 16, 21, 22 and 24 are agreed.
 - Condition 9 is not agreed.
- 3.5. **BH2018/01137**- Partial demolition of no. 80 Buckingham Road erection of a five storey building over basement including roof accommodation to create 20no. dwelling units (C3) and community use unit (D1). Conversion of nos. 76-79 Buckingham Road to provide 14no. dwelling units (C3) with associated car parking, cycle parking, landscaping and service provision. Approved 29.03.2019.

4. APPLICATION DESCRIPTION

- 4.1. Planning permission BH2018/01137 allowed for the 'partial demolition of no. 80 Buckingham Road erection of a five storey building over basement including roof accommodation to create 20no. dwelling units (C3) and community use unit (D1). Conversion of nos. 76-79 Buckingham Road to provide 14no. dwelling units (C3) with associated car parking, cycle parking, landscaping and service provision.' It was approved in March 2019, then varied in June 2021 to allow the affordable housing units to be provided in the new-build part of the scheme (ref. BH2020/02102).
- 4.2. This application seeks to allow for the variation of condition 1 of BH2020/02102 and condition 1 of BH2022/02752 to allow amendments to drawings comprising the addition of 2no new residential units, design alterations to the roof form, removal of the reinforced concrete frame, reconfiguration of internal space including vehicle parking and associated alterations.
- 4.3. It also seeks to provide the affordable housing secured in relation to previous permissions via a reduced commuted sum, rather than on site.
- 4.4. Following application BH2020/02102 application BH2021/03435 for the variation to amend the wording of condition 9 of BH2020/02102 to allow the sound insulation scheme to be submitted prior to occupation was approved.
- 4.5. The scheme includes a community use which was previously within Use Class D1. However, this was revoked on 20th September 2020, and as such the new community use within the site and within the relevant conditions now falls within use class F ('local community and learning').

5. REPRESENTATIONS

None received.

6. CONSULTATIONS

- 6.1. **Housing Strategy:** Comment
The provision of £500,000 as a commuted sum in lieu of affordable homes on site at this development is acceptable and is within the council's affordable housing policy. Commuted sums can be used towards development or purchase of affordable rented homes in the city.
- 6.2. **Heritage:** No objection
- 6.3. **Sustainable Transport:** No objection
No objection to this variation.
- 6.4. **Private Sector Housing:** Comment
The means of escape in case of fire should not be through an open plan lounge/kitchen as these are considered 'high risk' rooms in case of fire. The applicant may therefore wish to consider rearranging the layout of the ground floor units, or ensure effective means of escape in case of fire can be provided directly from any bedroom without entering a 'high risk' room.
- 6.5. **Environmental Health:** No objection
No objection subject to recommended condition.
- 6.6. **Flood Risk Officer:** Comment to follow
- 6.7. **Southern Water:** No objection
Require adherence to the approved Sustainable Urban Drainage Systems (SuDS) scheme.

7. MATERIAL CONSIDERATIONS

- 7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other material planning considerations identified in the "Considerations and Assessment" section of the report.
- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016);
 - Brighton & Hove City Plan Part Two (adopted October 2022);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
 - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
 - Shoreham Harbour JAAP (adopted October 2019).

8. POLICIES

The National Planning Policy Framework (NPPF)

Brighton & Hove City Plan Part One

SS1	Presumption in Favour of Sustainable Development
CP1	Housing delivery
CP7	Infrastructure and developer contributions
CP8	Sustainable buildings
CP9	Sustainable transport
CP12	Urban design
CP14	Housing density
CP15	Heritage
CP19	Housing mix
CP20	Affordable housing

Brighton & Hove City Plan Part Two:

DM1	Housing Quality, Choice and Mix
DM9	Community Facilities
DM18	High quality design and places
DM20	Protection of Amenity
DM21	Extensions and alterations
DM22	Landscape Design and Trees
DM26	Conservation Areas
DM33	Safe, Sustainable and Active Travel
DM35	Travel Plans and Transport Assessments
DM40	Protection of the Environment and Health - Pollution and Nuisance
DM42	Protecting the Water Environment
DM43	Sustainable Drainage
DM44	Energy Efficiency and Renewables

Supplementary Planning Documents:

SPD12	Design Guide for Extensions and Alterations
SPD17	Urban Design Framework

9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in relation to this application relate to the principle of the development, the design and impact on the character of the area, the impact on amenity of future residents of the building, and neighbouring residents, the provision of affordable housing, and sustainable transport issues.

Principle of Development

- 9.2. Policy CP1 in City Plan Part One sets a minimum housing provision target of 13,200 new homes for the city up to 2030. However, on 24 March 2021 the City Plan Part One reached five years since adoption. National planning policy states that where strategic policies are more than five years old, local housing need calculated using the Government's standard method should be used in place of the local plan housing requirement. The local housing need figure for Brighton & Hove using the standard method is 2,333 homes per year. This includes a 35% uplift applied as one of the top 20 urban centres nationally.

- 9.3. The council's most recent housing land supply position is published in the SHLAA Update 2023 which shows a five-year housing supply shortfall of 7,786 (equivalent to 1.7 years of housing supply).
- 9.4. "When considering whether to grant planning permission for development which affects a conservation area or its setting the council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area or any features of special architectural or historic interest which it possesses. Case law has held that the desirability of preserving the character or appearance of a conservation area must be given "considerable importance and weight".
- 9.5. The principle of the redevelopment of the site to provide 34 residential units through the partial demolition of no. 80 Buckingham Road and the erection of a five storey building to create 20no. dwelling units (C3) and a community use unit (D1), and the conversion of nos. 76-79 Buckingham Road to provide 14no. dwelling units (C3) has been established by consent BH2018/01137 which was granted in March 2019. This was varied in June 2021 through planning application BH2020/02102 to allow for the affordable housing units to be provided in the new-build part of the scheme. Application BH2021/03435 allowed amendment to condition 9 so the sound insulation scheme to be submitted prior to occupation.
- 9.6. The Local Planning Authority considered the scheme to be acceptable in all regards and secured various details and measures by planning conditions in addition to contributions via a legal agreement.
- 9.7. Whilst this permission remains extant, it must be considered whether circumstances, policy or practice has changed significantly since the time this decision was taken. In this case it is considered that the policy context has not changed substantially in regard to the principle of development and the uses proposed. It should be noted that since the earlier approval and subsequent amendment applications the City Plan Part 2 development plan has been adopted and superseded Local plan policies but the emphasis of the new policies relating to this application remain as those relevant at the time that the earlier applications were determined. Overall, it is considered that there is no justifiable reason to take a decision contrary to that made previously by the Local Planning Authority and therefore no objection is raised to the principle of development.
- 9.8. The proposal for a net increase of two additional residential units should be given weight in light of the city's housing supply shortfall. The reconfigured unit at ground floor into two smaller units would create 2no. 1-bed two person units and the lower ground floor unit would create a 2-bed four person unit.

Design and Impact on Character of Area

- 9.9. When considering whether to grant planning permission for development in a conservation area the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

- 9.10. Case law has held that the desirability of preserving or enhancing the character or appearance of a conservation area should be given “considerable importance and weight”.
- 9.11. The present application proposes amendments to the design of the approved scheme comprising the following:
- Minor design alterations to the roof form
 - Addition of 2no. units at ground and lower ground level- resulting from the reconfigured unit at ground floor into two smaller units and the creation of a new unit at lower ground floor level
 - Reconfiguration of basement vehicle parking
 - Removal of the existing reinforced concrete frame
- 9.12. These alterations are considered acceptable in design terms, with no overall increase in built form. The main external alterations which include creating an additional west facing flat at lower level, with additional external staircase for access, parking amendments and minor alterations to fenestration would not considerably alter the design of the building as approved. The standing seams and finish of the roof are to be altered, yet the overall shape size and position remains the same.
- 9.13. The Heritage Officer has no objection on heritage grounds commenting that the proposed amendments make no significant change in the external appearance of the building as approved and therefore there would be no resultant harm caused to the conservation area.
- 9.14. On this basis the amended scheme is considered acceptable in terms of its design and the impact on the character of the area, including its heritage features.

Impact on Amenity of Future and Neighbouring Residents

- 9.15. The internal alterations would result in changes to the accommodation within the new build block, which includes the addition of two new units at ground and lower ground floor level. Flat 1 on the ground floor has been reconfigured into two smaller units (new flats 1 and 2, both 1 bed 2 person flats) and a lower ground floor unit has been created (Flat 22 – a 2 bed 4 person flat) making use of the level changes across the site. No changes are proposed to the four converted houses at 76-79 Buckingham Road, which have been completed.
- 9.16. The schedule of accommodation for the units differs from the approved scheme (BH2020/02102) within the new build. The approved (BH2020/02102) scheme provided 20 units: 14 x 2 bed units, 5 x 1 bed and 1 x 3 bed unit within the new build at 80 Buckingham Road. The current proposed scheme provides 22 units: 16 x 2 bed units, 5 x 1 bed and 1 x 3 bed unit within the new build at 80 Buckingham Road. The majority of the scheme would therefore comprise one- and two-bed units where local assessments indicate that the greatest demand for housing is for two-bed units. It is therefore considered that the mix would meet the identified demand, and the change in mix over the previous, agreed scheme is minimal.

- 9.17. All units, including the 2 additional units now proposed, meet or exceed the 'Nationally Described Space Standard' with functional layouts and adequate light and outlook. Private Sector Housing have noted that some ground floor units could be revised to ensure there would no fire risk, however this would be covered by building control regulations.
- 9.18. The new lower ground floor unit would be adjacent to an electrical substation room and an open car park area. As part of this current application a Noise Impact Assessment has been submitted (dated 18th July 2022) and concludes that provided the mitigation measures outlined in terms of glazing and party wall sound insulation are met a good standard of accommodation would be achieved within the unit. The report outlines that internal ambient and maximum noise levels would be in accordance with guidance detailed in British Standard 8233:2014 and the ProPG document. Furthermore, low frequency noise, associated with the substation, would not be of a magnitude sufficient to cause nuisance. Existing condition (9) requires that the units will require testing prior to occupation, which include the new lower ground floor unit. The Environmental Health Officer has provided comment and has no objection giving the findings within the Noise Report yet notes that given there is already a requirement to test the units, this condition should remain and has advised that if practicable, a condition is applied to provide details of construction prior to commencement.
- 9.19. The summary of the submitted Daylight and Sunlight Report which has assessed the new unit at lower ground floor level concludes that the proposed lower ground floor unit would comply with BRE guidelines, exceeding the BRE requirements for natural daylight and with good levels of sunlight.
- 9.20. The external alterations which are relatively minor in the context of the wider site would not result in amenity harm, and the new fenestration would not result in increased overlooking.
- 9.21. On this basis the scheme is considered acceptable in terms of the standard of accommodation provided for future residents, and the impact on neighbouring residents.

Affordable Housing Provision

- 9.22. Policy CP20 requires the provision of 40% affordable housing on-site for schemes of 15 or more net dwellings. When planning permission was originally granted for the development in 2018, it was on the basis that it included 40% affordable housing on site, in line with policy CP20, to be provided as eight affordable rent units and six shared ownership in line with the council's Affordable Housing Brief.
- 9.23. The developer had initially intended to use the 14 refurbished homes as the affordable housing element but did not obtain any offers from the Registered Providers (RPs) it approached. Given the lack of offers for the affordable housing and to maintain their cash flow the developer then requested via application BH2020/02102 to move the affordable homes into the new build block instead (without any loss of affordable provision). This allowed them to sell the converted flats and create a revised offer for RPs.

- 9.24. Since that time the applicant states that delays on site and increases in building costs have stymied the continued development of the new-build block, with the result that it is no longer viable to provide the original, approved affordable homes on site. This is even taking into account the two additional units now proposed. The scheme has suffered
- 9.25. To support this position the developer has provided a Viability Assessment with the revised application, outlining that they could now only support a commuted sum payment. This has been reviewed by the who have concluded that the scheme can support a commuted sum payment of £453,975 and still be viable. The developer has offered a commuted sum payment of £500,000 which exceeds the amount outlined in the DVS conclusion. As this conclusion has been reached in line with council policy it is deemed acceptable.
- 9.26. The Housing Strategy Officer agrees with this conclusion and is satisfied that a commuted sum would be acceptable and would contribute towards the provision of affordable housing in the City.
- 9.27. It is accepted that there is an existing legal agreement securing the provision of 14 affordable homes on the site which in theory the Council could hold the developer to. However, this risks the scheme not coming forward at all, based on the applicant's claim that it is no longer deliverable, backed up by the DVS having reviewed these conclusions. This being the case, the provision of £500,000 as a commuted sum in lieu of affordable homes on site at this development is considered acceptable and to accord with the council's affordable housing policy CP20. This would enable the scheme to be finalised, and as noted by the Housing Strategy Officer, the commuted sum can be used towards development or the purchase of affordable rented homes in the City.
- 9.28. A review mechanism is recommended to ensure that that the actual achieved sales values and construction costs can be reviewed and any uplift in development value is shared with the Council. This is recommended as a Heads of Term and can be secured by S106 Legal Agreement.

Sustainable Transport:

- 9.29. The reconfiguration of basement car park would result in a reduction of 4 approved car parking spaces. The Highways Officer notes that previous comments as part of application BH2018/01137 stated "Given the site's very central location easily accessible by alternative modes, and subject to the provision of a good quality Travel Plan, a reduction in car parking spaces in order to provide for improved cycle parking is likely to be acceptable." Given this and that the site is located within a CPZ which will mitigate any on-street parking stress, the reduction is acceptable in this instance. The Officer has requested that as the site is considered car-free and residents, other than blue badge holders, will not be eligible for parking permits, parking bays P2 and P3 should only be used for operational parking and/or have designated use, which would reduce the number of vehicle movements on and off site. Given the likely number of movements at one time this is not considered necessary in this instance.

- 9.30. The addition of 2no two-bedroom units would require the addition of 2 cycle parking spaces. The Highways Officer considers the 42 cycle spaces sufficient for the development, in accordance with SPD14 guidance.

Other Matters:

- 9.31. Since the original application was approved details to address a number of conditions have been approved. The relevant conditions shall be updated in order to reflect the approved details as well as reflecting the adoption of City Plan Part 2.

10. EQUALITIES

- 10.1. Section 149(1) of the Equality Act 2010 provides:

- 1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 10.2. Officers considered the information provided by the applicant, together with the responses from consultees (and any representations made by third parties) and determined that the proposal would not give rise to unacceptable material impact on individuals or identifiable groups with protected characteristics.

11. COMMUNITY INFRASTRUCTURE LEVY

- 11.1. Under the Regulations of the Community Infrastructure Levy (CIL) 2010 (as amended), Brighton & Hove City Council adopted its CIL on 23 July 2020 and began charging on all CIL liable planning applications on and from the 5 October 2020. The exact amount will be confirmed in the CIL liability notice which will be issued as soon as it practicable after the issuing of planning permission.

12. S106 AGREEMENT

- 12.1. In the event that the draft S106 agreement has not been signed by all parties by the date set out above, the application shall be refused for the following reasons:
1. The proposed development fails to provide a mechanism by which to secure affordable housing, or a financial contribution towards it in the city, in case of the viability situation changing, contrary to Policies CP7 and CP20 of the Brighton & Hove City Plan Part One and the City Council's Developer Contributions Technical Guidance.